

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEAN PERSELLO,)
Plaintiff)
v.) Case No.:
NCO FINANCIAL SYSTEMS, INC.,) COMPLAINT AND DEMAND FOR
Defendant) JURY TRIAL
) (Unlawful Debt Collection Practices)

COMPLAINT

DEAN PERSELLO ("Plaintiff"), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC., ("Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28

U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

6. Plaintiff is a natural person residing in Salem, Ohio, 44460.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-2308.

9. Defendant is a debt collector as that term is defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a
comprehensive statute, which prohibits a catalog of activities in connection with
the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
imposes civil liability on any person or entity that violates its provisions, and
establishes general standards of debt collector conduct, defines abuse, and provides
for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
FDCPA declare certain rights to be provided to or claimed by debtors, forbid
deceitful and misleading practices, prohibit harassing and abusive tactics, and
proscribe unfair or unconscionable conduct, both generally and in a specific list of
disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices
considered contrary to its stated purpose, and forbids debt collectors from taking
such action. The substantive heart of the FDCPA lies in three broad prohibitions.
First, a “debt collector may not engage in any conduct the natural consequence of
which is to harass, oppress, or abuse any person in connection with the collection
of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
deceptive, or misleading representation or means in connection with the collection
of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.

7 13. In enacting the FDCPA, the United States Congress found that “[t]here
8 is abundant evidence of the use of abusive, deceptive, and unfair debt collection
9 practices by many debt collectors,” which “contribute to the number of personal
10 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.

16 14. Congress enacted the FDCPA to regulate the collection of consumer
17 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
18 abusive debt collection practices by debt collectors, to insure that debt collectors
19 who refrain from using abusive debt collection practices are not competitively
20 disadvantaged, and to promote consistent State action to protect consumers against
21 debt collection abuses.” 15 U.S.C. § 1692e.

24 **FACTUAL ALLEGATIONS**

25 15. At all pertinent times hereto, Defendant was hired to collect a

1 consumer debt allegedly owed by Plaintiff.

2 16. The alleged debt at issue arose out of transactions, which were
3 primarily for personal, family, or household purposes.
4

5 17. Beginning on or about October 17, 2010 and continuing through
6 November 30, 2010, Defendant constantly and continuously placed collection
7 calls to Plaintiff's cellular telephone number seeking and demanding payment for
8 an alleged debt.
9

10 18. On average, Defendant contacted Plaintiff twenty (20) times in a
11 single month requesting Plaintiff return the call and ask for "Ed Blanchard."

12 19. Aggravated by Defendant's repeated and continuous calls, on October
13 29, 2010, Plaintiff had counsel, Darrell D. Maddock, send correspondence to
14 Defendant instructing that it cease further communication on its collection account
15 number TDY145. See Exhibit A.
16

17 20. Despite receiving correspondence to cease communications on
18 collection account number TDY145, Defendant continued to place collection calls
19 to Plaintiff through November 30, 2010.
20

21 21. Upon information and belief, within five (5) days of its initial contact
22 with Plaintiff, Defendant failed to send Plaintiff written notification informing him
23 of his rights to dispute the debt and/or request verification of the debt.
24

22. Defendant conducted its debt collection activities in ways that were factually misrepresented and in violation of the FDCPA.

CONSTRUCTION OF APPLICABLE LAW

23. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

24. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

25. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.

1 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
2 was not "made for the protection of experts, but for the public - that vast multitude
3 which includes the ignorant, the unthinking, and the credulous, and the fact that a
4 false statement may be obviously false to those who are trained and experienced
5 does not change its character, nor take away its power to deceive others less
6 experienced." Id. The least sophisticated consumer standard serves a dual
7 purpose in that it ensures protection of all consumers, even naive and trusting,
8 against deceptive collection practices, and protects collectors against liability for
9 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
10 1318.

COUNT I
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES
ACT**

26. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692 generally;
- b. Defendant violated §1692c(c) of the FDCPA by communicating with Plaintiff after being notified in writing that Plaintiff wants Defendant to cease further communication;
- c. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt; and

- d. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring and engaging Plaintiff in telephone conversations repeatedly and continuously with the intent to annoy, abuse or harass;
- e. Using unfair or unconscionable means to collect or attempt to collect any debt, in violation of 15 U.S.C. §1692f; and
- f. Defendant violated §1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt.

27. As a direct and proximate result of one or more or all of the statutory violations above, Plaintiff has suffered emotional distress.

WHEREFORE, Plaintiff, DEAN PERSELLO, respectfully requests judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for the following:

- a. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,
- b. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k,
- c. Actual damages,

1 d. Costs and reasonable attorneys' fees pursuant to the Fair Debt
2 Collection Practices Act, 15 U.S.C. § 1692k
3
4 e. Any other relief that this Honorable Court deems appropriate.

5 **DEMAND FOR JURY TRIAL**

6 PLEASE TAKE NOTICE that Plaintiff, DEAN PERSELLO, demands a
7 jury trial in this case.
8

9 DATED: 5-10-11

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

11 By: _____
12 Craig Thor Kimmel
13 Attorney ID # 57100
14 Kimmel & Silverman, P.C.
15 30 E. Butler Pike
16 Ambler, PA 19002
17 Phone: (215) 540-8888
18 Fax: (877) 788-2864
19 Email: kimmel@creditlaw.com

UAW LEGAL SERVICES PLANS

**UAW-GM UAW-Ford UAW-Chrysler LLC
1570 S. Canfield-Niles Road, Bldg. B, Ste. 101, Austintown, OH 44515
(330) 799-7711 Fax: (330) 799-5220**

October 29, 2010

NCO Financial Systems
507 Prudential Road
Horsham, PA 19044

Re: DALE R. PERSELLO
Reference No. TDY145

Dear Sir or Madam:

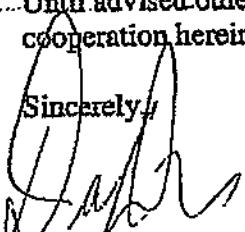
Please be advised that I represent the above-named individual who has recently received a debt collection communication from your company.

Pursuant to the Fair Debt Collection Practices Act, 15 USC Section 1692 et seq., you are hereby directed to:

1. Cease all further communications with my client, and
2. Provide the undersigned with verification of the purported debt, and
3. Provide the undersigned with the name and address of the original creditor, if different from the current creditor.

Until advised otherwise, you should mark this matter as "disputed." I anticipate your cooperation herein.

Sincerely,


Darrell D. Maddock
Attorney at Law

cc: DALE R. PERSELLO

CERTIFIED MAIL/RETURN RECEIPT REQUESTED 7009 0080 0002 2538 6503

